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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In Re Bard IVC Filters Products Liability  
Litigation

No. MD-15-02641-PHX-DGC

LISA HYDE and MARK HYDE, a married  
couple,

Plaintiffs,

v.

C.R. BARD, INC., a New Jersey corporation  
and BARD PERIPHERAL VASCULAR, an  
Arizona corporation,

Defendants.

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION *IN LIMINE*  
NO. 5 TO EXCLUDE OPINION  
TESTIMONY OF DR. KANDARPA**

(Assigned to the Honorable David G.  
Campbell)

(Oral Argument Requested)

**MEMORANDUM OF LAW IN SUPPORT**

**I. Dr. Kandarpa's Testimony Is Proper Expert Opinion from a Fact Witness.**

Bard has overlooked the obvious in an attempt to exclude evidence that it knows is appropriate, albeit, not positive for Bard – Dr. Kandarpa is an interventional radiologist, his testimony is based on his observations while working as an agent for Bard. In his deposition on July 19, 2018 (referenced *infra* as Exhibit A), foundation was laid that qualified Dr. Kandarpa to provide specific opinions in connection with his work for Bard as medical monitor of the EVEREST retrievability trial. He was deposed specifically about his “role as medical monitor in that study.” *See* Kandarpa Dep. Tr. at 24:9-15.

1           What matters here is the reliability of Dr. Kandarpa, which is dictated by his own  
2           personal knowledge and experience of the subject matter. Bard would be foolhardy to  
3           contend that Dr. Kandarpa is not qualified to render opinions about IVC filters – Bard hired  
4           and paid Dr. Kandarpa to be the medical monitor of Bard’s EVEREST study because of Dr.  
5           Kandarpa’s medical expertise in the field of interventional radiology. That he happens to  
6           also be a fact witness because of this involvement is of little consequence to determining  
7           the appropriateness of his testimony. Any opinion testimony by Dr. Kandarpa was  
8           “rationally based on (his) perception,” and/or “helpful to clearly understanding (his)  
9           testimony or to determining a fact in issue.” *Federal Rules of Evidence* (“FRE”) 701(a) and  
10          (b). His responsibility as medical monitor was to adjudicate adverse events reported by  
11          study investigators and determine whether the event was related to the G2 filter. *See*  
12          Kandarpa Dep. Tr. at 24:16-25:3. Dr. Kandarpa’s analysis included review of patient  
13          records, imaging studies, study reports, and adverse event summaries. *Id.* at 30:13-31:16.  
14          As such, Dr. Kandarpa’s opinions are based on his observations, as an interventional  
15          radiologist, while working in his role as medical monitor. *Id.* at 35:6-13.

16          Demonstrating either ignorance or obtuseness, Bard states testimony that “results  
17          from process of reasoning which can be mastered only by specialists in the field,” cannot  
18          be offered as lay witness testimony. Plaintiffs agree. Bard, however, intentionally omits  
19          that Dr. Kandarpa is a “specialist in the field” in which his testimony was provided. *See*  
20          Bard MIL No. 5 at 2:11-13. His opinions are rationally based on his perception as an  
21          interventional radiologist with the amount and level of knowledge, experience, and  
22          expertise. Indeed, Dr. Kandarpa knows what “a reasonable and practicing physician would  
23          want to know” (and, thus what an ordinary consumer like Mrs. Hyde would expect) with  
24          respect to the risks of IVC filters because he is one himself, and his qualifications as an  
25          expert in the field have been established. *See* Kandarpa Dep. Tr. at 131:3-10.

26          Additionally, Bard failed to recognize that one of Dr. Kandarpa’s specific  
27          responsibilities as medical monitor of the EVEREST study, as bestowed by Bard, was to  
28          “establish adverse event complication definition” and “review and adjudicate

1 complications” and “adverse events as they occur. *Id.* at 146:23-147:16, 148:13- 17.  
2 Performance evaluation of the G2 filter (tilt, migration, perforation, fracture) was part of  
3 Dr. Kandarpa’s role as the medical monitor. *Id.* at 53:9-12, 58:7-10, 93:8-11.

4 Taking one of Bard’s own examples [*see* Bard MIL No. 5 at 2:6-13], Bard argues  
5 Dr. Kandarpa is drawing inferences from “undisclosed knowledge bases” because, with  
6 regard to filter migration, Dr. Kandarpa states that he did not form a specific opinion *during*  
7 the EVEREST study and “[i]t’s something that happens that’s generally known...” The very  
8 next question, which Bard omits, is, “Did you – are you saying you understood that was  
9 going on with the G2 filter? Yes...in the study, yes.” *See* Kandarpa Dep. Tr. at 60:18-22.  
10 So, yes, Dr. Kandarpa was aware of the phenomenon because of his prior experiences.  
11 Importantly, however, this prior belief was reaffirmed and demonstrated in the EVEREST  
12 study, over which he supervised and monitored closely for Bard.

13 Bard also complains that Dr. Kandarpa was not designated as an expert by Plaintiffs  
14 and that his testimony is somehow a “surprise” to Bard. But, this bridge has been crossed  
15 and the Court ordered that Plaintiffs could notice and take the deposition of Dr. Kandarpa.<sup>1</sup>  
16 And, Bard, in turn, was provided equal opportunity to discover and prepare for the  
17 deposition of Dr. Kandarpa. Dr. Kandarpa is not – nor would he have been – a retained  
18 expert by Plaintiffs. He is a fact witness with expert qualifications in the field to which his  
19 testimony relates. This happens all the time in cases involving science and medicine.

20 Further, Dr. Kandarpa was deposed as a witness “identified with an adverse party,”  
21 pursuant to Federal Rules of Evidence (“FRE”) 611(c)(2). Dr. Kandarpa was contracted by  
22 Bard Peripheral Vascular (not Boston Biomedical Associates) as the Clinical Events  
23 Coordinator (“CEC”) for the [EVEREST] study. *See* Kandarpa Dep. Tr. at 205:20- 208:19.  
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26 <sup>1</sup> Plaintiffs sought to call Dr. Kandarpa live for trial in the *Booker* and *Jones* cases, but  
27 were denied, in part, for the reasons Bard asserts Plaintiffs should be denied now. The  
28 Court has revisited this important area of discovery and considered briefing and oral  
argument by both sides before ordering the parties can utilize testimony from Dr.  
Kandarpa for future MDL bellwether cases.

1 For the above stated reasons, Plaintiffs respectfully request that Defendants Motion  
2 in Limine No. 5 be denied.

3  
4 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of August 2018.

5  
6 GALLAGHER & KENNEDY, P.A.

7 By: /s/ Mark S. O'Connor

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14  
15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on this 28<sup>th</sup> day of August 2018, I electronically transmitted  
17 the attached document to the Clerk's Office using the CM/ECF System for filing and  
18 transmittal of a Notice of Electronic Filing.

19 /s/ Jessica Gallentine